

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WALLACE BRUSH,

Plaintiffs, **COMPLAINT AND
JURY DEMAND**

-against-

THE CITY OF NEW YORK, JOHN DOE POLICE
OFFICER REGISTRY # 950449, JOHN DOE POLICE
OFFICERS ##1-2,

DOCKET # 14CV5316

Defendants. ECF CASE

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PRELIMINARY STATEMENT

1. This is a civil rights action in which plaintiff seeks relief for the violation of his rights secured by 42 USC §1983, §1988 and the Fourth and Fourteenth Amendments to the United States Constitution.

2. The claim arises from a March 5, 2013 incident in which Officers of the New York City Police Department ("NYPD"), acting under color of state law, intentionally and willfully subjected plaintiff to, among other things, false arrest, false imprisonment and excessive force.

3. Plaintiff seeks monetary damages (special, compensatory, and punitive) against defendants, as well as an award of costs and attorneys' fees, and such other and further relief as the Court deems just and proper.

JURISDICTION

4. This action is brought pursuant to 28 USC §1331, 42 USC §1983, and the Fourth and Fourteenth Amendments to the United States Constitution.

5. The amount in controversy exceeds \$75,000.00 excluding interest and costs.

6. Venue is laid within the United States District Court for the Eastern District of New

York in that Defendant City of New York is located within and a substantial part of the events giving rise to the claim occurred within the boundaries of the Eastern District of New York.

PARTIES

7. Plaintiff Wallace Brush is a citizen of the United States and at all times here relevant residing in the City and State of New York.

8. The City of New York is a municipal corporation organized under the laws of the State of New York.

9. All other defendants were at all times here relevant employees of the NYPD, and are sued in their individual and official capacities.

10. At all times here mentioned defendants were acting under color of state law, to wit, under color of the statutes, ordinances, regulations, policies, customs and usages of the City and State of New York.

FACTUAL ALLEGATIONS

11. On March 5, 2013, at approximately 5:30 a.m., plaintiff was near the corner of Roosevelt Avenue and 79th Street, Jackson Heights, Queens NY, observing an unknown person get arrested.

12. Plaintiff believed that excessive force was being used by the police in the course of the arrest, and said out loud that he was going to make a call to report them.

13. When he started entering the password into his cellphone, a police officer grabbed him, through him against a car, and began searching him in apparent retaliation for plaintiff attempting to report the brutality.

14. The officer began to search him. Plaintiff told the officer that he does not consent to searches, to which the police officer replied, in sum and substance, "how is this fruity". The

police officer then squeezed his testicles forcefully, causing plaintiff to suffer pain.

15. The police officer appeared to believe that plaintiff is gay.

16. Plaintiff was taken to the precinct and held in a cell for a number of hours. He was subjected to a full search. He was given a disorderly conduct summons and thereafter released.

17. The summons issued by defendant # 950449 was dismissed.

18. Plaintiff denied and still denies being engaged in any illegal behavior in connection with the arrest.

19. At all times during the events described above, the defendant police officers were engaged in a joint venture and formed an agreement to violate plaintiff's rights. The individual officers assisted each other in performing the various actions described and lent their physical presence and support and the authority of their office to each other during said events. They failed to intervene in the obviously illegal actions of their fellow officers against plaintiff.

20. During all of the events above described, defendants acted maliciously and with intent to injure plaintiff.

21. As a direct and proximate result of the acts of defendants, plaintiff suffered the following injuries and damages:

- a. Violation of his rights pursuant to the Fourth and Fourteenth Amendments to the United States Constitution to be free from an unreasonable search and seizure;
- b. Violation of his right to Due Process of Law under the Fourteenth Amendment to the United States Constitution;
- c. Pain and suffering;
- d. Invasion of privacy;
- e. Severe emotional trauma and suffering, including fear, embarrassment,

humiliation, severe emotional distress, frustration, extreme inconvenience, and anxiety;

and

f. Loss of liberty.

FIRST CAUSE OF ACTION

(42 USC § 1983 – FALSE ARREST AND IMPRISONMENT)

22. The above paragraphs are here incorporated by reference.

23. Defendants acted under color of law and conspired to deprive plaintiffs of his civil, constitutional and statutory rights to be free from unreasonable search and seizure pursuant to the Fourth Amendment to the United States Constitution.

24. Specifically, plaintiff's right to be free from false arrest and false imprisonment was violated when he was unlawfully and without probable cause detained at the scene of the incident by police officers and subsequently detained at the police precinct.

25. Plaintiff has been damaged as a result of defendants' wrongful acts.

26. Defendants are liable to plaintiff under 42 U.S.C. §1983.

SECOND CAUSE OF ACTION

(42 USC § 1983 – EXCESSIVE FORCE)

27. The above paragraphs are here incorporated by reference.

28. Defendants acted under color of law and conspired to deprive plaintiffs of his civil, constitutional and statutory right to be free from unreasonable search and seizure pursuant to the Fourth Amendment to the United States Constitution.

29. Specifically, plaintiff's right to be free from the use of excess force, was violated when he was assaulted by the police officer who arrested him at the scene of the incident.

30. Plaintiff has been damaged as a result of defendants' wrongful acts.

31. Defendants are liable to plaintiff under 42 U.S.C. §1983.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally, as follows:

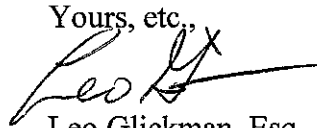
- A. In favor of plaintiff in an amount to be determined by a jury for each of plaintiff's causes of action;
- B. Awarding plaintiff punitive damages in an amount to be determined by a jury;
- C. Awarding plaintiff reasonable attorneys' fees, costs and disbursements of this action; and
- D. Granting such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: Brooklyn, New York
September 10, 2014

TO: New York City
Corporation Counsel Office
100 Church Street, 4th floor
New York, NY 10007

Yours, etc.,

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